

Ordinance No. 121879

Council Bill No. 115285

AN ORDINANCE relating to Seattle Center; authorizing the execution of an agreement between the City and IRIS Holdings, LLC ("IRIS") relating to the City's potential acquisition of certain rights-of-way through property located on Fifth Avenue North that IRIS has contracted to purchase from the City.

CF No. _____

Date Introduced:	JUN 13 2005		
Date 1st Referred:	JUN 13 2005		
Date Re - Referred:	To: (committee) Parks, Neighborhoods & Education		
Date Re - Referred:	To: (committee)		
Date of Final Passage:	Full Council Vote:		
8-8-05	9-0		
Date Presented to Mayor:	Date Approved:		
8-9-05	8/16/05		
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>	
8/17/05	2 pgs.		
Date Vetoed by Mayor:	Date Veto Published:		
Date Passed Over Veto:	Veto Sustained:		

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

DELLA

Councilmember

Committee Action:

Adopt as substituted; Motion: DD, 2nd: JC PS

Y: 3, N: 0

8-8-05 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

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ORDINANCE

121879

AN ORDINANCE relating to Seattle Center; authorizing the execution of an agreement between the City and IRIS Holdings, LLC ("IRIS") relating to the City's potential acquisition of certain rights-of-way through property located on Fifth Avenue North that IRIS has contracted to purchase from the City.

WHEREAS, pursuant to Ordinance 121742, the City and IRIS, a wholly-owned subsidiary of the Bill & Melinda Gates Foundation, executed a Purchase Agreement pursuant to which IRIS will purchase certain City property located on Fifth Avenue North, and commonly known as Seattle Center Parking Lot 2, for construction of the world headquarters campus of the Bill & Melinda Gates Foundation; and

WHEREAS, on January 10, 2005, just prior to submittal of the Purchase Agreement to the City Council for review and approval, the City Council adopted Resolution 30726 recommending as a preferred alternative for future construction of the northern terminus of the Alaska Way Viaduct and Seawall Project, the so-called Lowered Aurora option; and

WHEREAS, implementation of the Lowered Aurora option will have a material impact on the Lot 2 site, potentially substantially altering the plans of IRIS and the Bill & Melinda Gates Foundation; and

WHEREAS, in recognition of the potential impacts from the Lowered Aurora option, the City Council, in Ordinance 121742 authorizing the sale of Lot 2 to IRIS, required that the Purchase Agreement would terminate unless a Council-approved agreement acceptable to the Bill & Melinda Gates Foundation addressing such impacts is executed before the expiration of the Due Diligence Period, as extended, provided for in the Purchase Agreement; and

WHEREAS, the parties have concluded their negotiations; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director ("Director") and recommended by the Mayor, the Seattle Center Director or her or his designee is hereby authorized to execute and deliver, for and on behalf of The City of Seattle, an agreement substantially in the form of the agreement attached hereto and identified as "RIGHTS-OF-WAY AGREEMENT: LOWERED AURORA AND PROJECTS AFFECTING LOT 2" (Attachment 1).



Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 8th day of August, 2005, and signed by me in open session in authentication of its passage this 8th day of August, 2005.

J. Anderson
President _____ of the City Council

Approved by me this 16 day of August 2005.

Gregory J. Nickels
Gregory J. Nickels, Mayor

Filed by me this 17 day of Aug., 2005

Joan E. Lippert
City Clerk

(Seal)

Attachment 1 -- RIGHTS-OF-WAY AGREEMENT: LOWERED AURORA AND PROJECTS AFFECTING LOT 2

Exhibit A to Attachment 1 – Diagram of Property Additions



Attachment 1

**RIGHTS-OF-WAY AGREEMENT:
LOWERED AURORA AND PROJECTS AFFECTING LOT 2**

RECITALS

WHEREAS, the Bill & Melinda Gates Foundation conducted a region-wide search for a site with sufficient acreage to enable it to construct over time a multi-structure campus sufficient to accommodate a headquarters facility for many decades to come; and

WHEREAS, the Bill & Melinda Gates Foundation evaluated numerous sites within the City of Seattle (the "City"), including the Seattle Center 5th Avenue Parking Lot ("Lot 2") and several multi-block sites in nearby proximity to the Lot 2 site; and

WHEREAS, the Bill & Melinda Gates Foundation has told the City that it responded to the City's proposal of making the Lot 2 site available for purchase and that it selected the Lot 2 site for location of its world headquarters because, among other reasons, the Lot 2 site was the only available site with sufficient contiguous acreage not currently transected by public streets; and

WHEREAS, during negotiation of the Purchase Agreement for acquisition of Lot 2 by IRIS Holdings, LLC ("IRIS"), a wholly-owned entity of the Bill & Melinda Gates Foundation, Seattle Center representatives presented a proposal for substantial transportation improvements in the vicinity of the site. The Mayor's proposal involved the lowering of Aurora Avenue, including widening of the right-of-way for ramps, the extension of Sixth Avenue between Mercer and Harrison Streets, and the reconnection of east-west streets across Aurora, including Republican Street from Dexter Avenue to the extended Sixth Avenue ("Lot 2 Street Extensions"). The Mayor's proposal also required vacation of Broad Street between Ninth Avenue and Harrison or Thomas Street ("Broad Street Vacation"); and,

WHEREAS, on January 10, 2005, just prior to submittal of the proposed Purchase Agreement to the City Council for review and approval, the City Council adopted Resolution 30726 declaring a preferred alternative for the Alaska Way Viaduct and Seawall Project, a feature of which is the so-called Lowered Aurora option that contemplates the Lot 2 Street Extensions and the Broad Street Vacation (collectively, the "Project Affecting Lot 2"). The issue also was raised during City Council consideration of the Lot 2 Purchase Agreement; and

WHEREAS, in order to address the Project Affecting Lot 2 as an item during due diligence following execution of the Purchase Agreement, Ordinance 121742 provides that "(p)rior to the end of the 90 day Due Diligence Period provided for in Section 4 of the Purchase Agreement, the Mayor shall transmit legislation to the City Council for its review and approval of an agreement acceptable to the City and to the Bill & Melinda



Gates Foundation addressing potential impacts and consequences of the City's possible acquisition of street rights of way for a Sixth Avenue extension through Lot 2 [the "Project Affecting Lot 2"]. As provided in Section 5 of the Purchase Agreement, the Purchase Agreement shall terminate unless a Council-approved agreement acceptable to the Bill & Melinda Gates Foundation is executed before the expiration of the Due Diligence Period, as extended. Notwithstanding the preceding, IRIS may at any time during the Due Diligence Period approve or waive all Diligence Period Conditions and proceed to close; and

WHEREAS, since enactment of Ordinance 121742, IRIS and the Bill & Melinda Gates Foundation have continued their evaluation of the prospects for the Project Affecting Lot 2 as proposed and the potential impacts such extensions and vacations may have for utilization of the Lot 2 site for the headquarters of the Bill & Melinda Gates Foundation; and

WHEREAS, while it remains uncertain whether the measures included in the Project Affecting Lot 2 would be undertaken by the City, or if they were, when that might occur, the City is willing to establish a date certain by which the City will notify IRIS and the Bill & Melinda Gates Foundation of its intent to initiate further actions to implement the Project Affecting Lot 2 and IRIS is willing to defer construction in the potential rights-of-way required for the Lot 2 Street Extensions and undertake other actions in consideration for the City's commitments provided for in this agreement (the "Agreement"); and,

WHEREAS, if the City proceeds to extend/vacate the streets as proposed, such extensions/vacations will have a material impact on the Lot 2 site, potentially substantially altering the plans of IRIS and the Bill & Melinda Gates Foundation. Although the extent of that impact is not determinable at this time, such potential damage would be fully compensated and mitigated as provided herein by the City at such time as it acquires rights-of-way for the Lot 2 Street Extensions and undertakes the Broad Street Vacation; and

WHEREAS, a portion of the Lot 2 site is encumbered until September 30, 2010 by the lease to the Basketball Club of Seattle for the Sonics and Storm Practice Facility ("Practice Facility") and by an easement for access to the Practice Facility; and

WHEREAS, certain measures may enable the Bill & Melinda Gates Foundation to make effective use of the Lot 2 site for its headquarters notwithstanding the impacts of the Project Affecting Lot 2; and

WHEREAS, the City and IRIS are entering this Agreement with a goal that IRIS be able to develop its campus for the headquarters of the Bill & Melinda Gates Foundation to the same extent and with the same density as if the Project Affecting Lot 2 had not occurred.



NOW, THEREFORE, as provided under Section 4 of Ordinance 121742 authorizing the sale of Lot 2 to IRIS, the City and IRIS (the "Parties") hereby agree as follows:

Section 1. Approval/Waiver of Due Diligence Conditions. IRIS hereby approves or waives all of the due diligence conditions under Section 5 of the Purchase Agreement precedent to its obligation to purchase the Lot 2 site (the "Property").

Section 2. Lot 2 Street Extensions and Broad Street Vacation – Project Affecting Lot 2. IRIS hereby agrees to include, and evaluate, in the environmental review documents for development of the campus on the Property, a development option based upon a reconfigured campus site that allows for the Lot 2 Street Extensions and the Broad Street Vacation. This development option incorporating the Project Affecting Lot 2 shall include the Property Additions that the City would propose to be provided in whole or partial exchange for the Lot 2 Street Extensions, as described in Section 4 below, and shall be based upon the design characteristics of Sixth Avenue, as described in Section 5 below.

Section 3. Limit on Construction within the Rights-of-Way Required for the Lot 2 Street Extensions. IRIS hereby agrees to defer construction of permanent improvements, which improvements do not include the relocation of utilities as the Parties may agree, within the IRIS-owned rights-of-way required for the Lot 2 Street Extensions until the earlier of the following dates (the "Deferral Termination Date"):

- (a) Notice to IRIS by the City that the City is no longer contemplating the Project Affecting Lot 2; or,
- (b) September 30, 2010.

If the City provides notice to IRIS and the Bill & Melinda Gates Foundation prior to September 30, 2010 that the Mayor will recommend the approval of the Broad Street Vacation to the City Council in order to implement the Project Affecting Lot 2, the Parties agree to enter into good faith negotiation of an agreement to convey the IRIS-owned rights-of-way required to implement the Project Affecting Lot 2 and to proceed with commitments under Section 4 below. The giving of such notice by the City, if applicable, shall extend the Deferral Termination Date to the later of September 30, 2010 or 90 days from the date of such notice, or such later date as may be agreed in writing by the Parties. Upon the Deferral Termination Date (as may be extended), IRIS's agreement to defer construction as set forth in this section shall automatically terminate.

The City acknowledges that, during the time period limiting construction within the Rights-of-Way required for the Lot 2 Street Extensions or as a result of lease and access encumbrances on some of the Property required for Lot 2 Street Extensions, IRIS may identify one or more development options contemplating construction of permanent improvements within such rights-of-way as an alternative under the environmental review documents for development of the Property and seek and obtain



permits for such future development options. The City shall not withhold or delay the processing of permit application(s) for such development options.

Section 4. Property Additions. The Parties concur that it is possible that the impact of the Project Affecting Lot 2 could be mitigated in whole or in part by conveyance to IRIS of two parcels of land adjacent to the Property that would become available to the City, as part of the proposed vacation and elimination of Broad Street between Aurora Avenue and Harrison Street, in the event the City proceeds with the contemplated Project Affecting Lot 2. These parcels are identified diagrammatically on Exhibit A (the "Property Additions").

- (a) The Parties agree that, in the event the City notifies IRIS and the Bill & Melinda Gates Foundation as provided for in Section 3 above, or otherwise determines to proceed with the contemplated Project Affecting Lot 2, the Director of the Seattle Department of Transportation (or that person's functional successor) shall, upon such notice, promptly prepare, and the Mayor shall recommend to the City Council, legislation authorizing the Broad Street Vacation and conveyance of the Property Additions to IRIS in whole or partial exchange for the IRIS property proposed to be acquired by the City.
- (b) Consideration to be paid to IRIS for the taking or dedication, including compensation for the value of the land acquired as well as other damages IRIS may experience as a result of the impact of the takings on facilities it may have constructed on the Property and its ability to achieve its fundamental objective in acquiring the Property, shall be reduced by the fair market value of the Property Additions conveyed.
- (c) In the event that the City Council does not approve vacation of Broad Street adjacent to the Property or take any other discretionary actions necessary to allow for conveyance to IRIS of the Property Additions in whole or partial exchange for the IRIS property proposed to be acquired by the City, as contemplated herein, the City agrees not to proceed with the Lot 2 Street Extensions through the Property.

Section 5. Sixth Avenue Design Characteristics. If the Project Affecting Lot 2 goes forward, with the result that the City reacquires the Lot 2 Street Extensions, the City agrees to mitigate, in consultation with IRIS, and at the City's expense (without offset against proceeds due IRIS for any taking), the impacts of the Project Affecting Lot 2 in part by designing Sixth Avenue through the Property (between Mercer and Harrison Streets) to have the following characteristics:

- (a) Sixth Avenue will be a "neighborhood" arterial street providing one of a number of options for traffic traveling to or through the area. Sixth Avenue will become part of an enhanced street grid that will serve to spread traffic out rather than concentrating all traffic in one particular corridor.



- (b) The design of Sixth Avenue will also reflect the City's land use planning goals and objectives to transform South Lake Union and Uptown urban centers into denser, pedestrian-friendly neighborhoods, well served by transit. Traffic speed on Sixth Avenue would be calmed by a speed limit likely to be 30 MPH (similar to other streets in the neighborhood); by signalized intersections and pedestrian crosswalks on each block through the area.
- (c) The design of Sixth Avenue will also allow for accommodation of a pedestrian skybridge over Sixth Avenue, at IRIS expense, to connect parcels of the Property that would be bisected by the proposed Sixth Avenue extension.
- (d) The Sixth Avenue right-of-way from Mercer Street to Harrison Street will be a maximum of 80' in width, with the center line of the street located at the center line of vacated Sixth Avenue; this is a transitional width between the somewhat narrower right of way on Sixth Avenue north of Mercer Street and the somewhat wider right of way on Sixth Avenue south of Harrison Street.
- (e) A maximum of four through travel lanes total (two northbound and two southbound) will be provided on Sixth Avenue between Mercer Street and Harrison Street. Left turn pockets may be included at intersections.
- (f) At the time of construction of Sixth Avenue, signalized intersections will be provided at Sixth Avenue and Mercer Street, Sixth Avenue and Republican Street, and Sixth Avenue and Harrison Street.
- (g) Sixth Avenue will be designed as a pedestrian-friendly "downtown" street. Wide sidewalks (10' minimum) will be provided on both sides of the street, with street trees and lighting. At the time of construction of Sixth Avenue, signalized crosswalks will be provided, at minimum, on the south side of the Sixth Avenue and Mercer Street intersection, on both north and south sides of the Sixth Avenue and Republican Street intersection, and the north and south sides of the Sixth Avenue and Harrison Street intersection.
- (h) As the principal property owner adjacent to proposed Sixth Avenue extension, IRIS and the Bill & Melinda Gates Foundation will be fully consulted on the actual street design and will have the opportunity to fund additional amenities beyond those identified above (such as a pedestrian skybridge) that enhance the neighborhood character of Sixth Avenue and circulation and access to and among the parcels of the Property as may be altered as a result of this Agreement.



Section 6. Relocation of Electrical Utilities. It is IRIS's desire in the development of the Property to relocate electrical utilities currently serving or traversing the Property, on a permanent basis, to the perimeter of the Property, either above or underground, at IRIS's expense. IRIS recognizes that electrical utilities presently serving or traversing the Property have a right of easement for continued service.

- (a) In the event that permanent relocation of some or all electrical utilities currently traversing or presently serving the Property are required by the City, solely in order to implement the Project Affecting Lot 2, to be located in the Sixth Avenue Right of Way, the expense of relocating such affected lines shall be at the cost and discretion of the City; provided, that, IRIS may elect to have the City locate underground any electrical utilities that would not otherwise be located underground and pay the additional incremental cost of doing so.
- (b) In the event that the Project Affecting Lot 2 includes a proposal to relocate electrical utilities not currently traversing or presently serving the Property in the Sixth Avenue Right of Way, and the City proceeds with the Lot 2 Street Extensions, the City agrees that such electrical utilities shall be located underground, that such utilities shall not be relocated at IRIS's expense, and that such utilities shall only be relocated in the Sixth Avenue Right of Way if there is sufficient space to include both the electrical utilities currently traversing or presently serving the Property and the electrical utilities not currently traversing or presently serving the Property.
- (c) The Parties acknowledge that if certain electrical utility transmission and distribution lines currently traversing the Property and/or currently located in Broad Street are relocated under the Property and the Property Additions as a consequence of the Project Affecting Lot 2 and the Broad Street Vacation, the City will require up to a 60-foot wide easement along Harrison Street within the approximate area of the Property and the Property Additions diagrammatically shown on Exhibit A to accommodate the underground installation and that for the duration of such easement, IRIS' improvements on the easement area will be limited to landscaping and minor hardscape installation.

Section 7. Good Faith Intent of the Parties. This Agreement is being entered into between the City and IRIS based on information known as of the execution date as a result of initial conceptual design of the Lowered Aurora Project (Exhibit B) and the Project Affecting Lot 2. Should the Project Affecting Lot 2 proceed as represented herein, the Parties expect that this Agreement will facilitate a fair value exchange between the Parties for impacts of the Project Affecting Lot 2 on the IRIS-owned Property that will serve as the headquarters for the Bill & Melinda Gates Foundation. The Parties acknowledge, however, that should the Project Affecting Lot 2 proceed, the actual impacts will be determined based upon the final project design, and the fair value exchange will be quantified and agreed upon at that time. It is the intent of the City to



honor the goal of the Bill & Melinda Gates Foundation to be able to develop the campus for its headquarters to the same extent and with the same density as if the Project Affecting Lot 2 had not occurred.

Section 8. Representations and Warranties.

(a) The City. The City hereby represents and warrants that it has full and complete power and authority to enter into this Agreement and to perform its obligations hereunder, including full and complete power and authority to enter into and to perform its obligations under the agreements contemplated by this Agreement, subject to the terms and conditions of this Agreement, and has obtained an opinion from the City's law department to such effect.

(b) IRIS. IRIS hereby represents and warrants that it has full and complete power and authority to enter into this Agreement and to perform its obligations hereunder, including full and complete power and authority to enter into and to perform its obligations under the agreements contemplated by this Agreement, subject to the terms and conditions of this Agreement.

Section 9. Miscellaneous.

(a) Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service, with receipt acknowledgment requested, (iii) upon receipt if transmitted by facsimile telecopy, with a copy sent on the same day by one of the other permitted methods of delivery, or (iii) upon receipt or refused delivery deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

IF TO CITY: The City of Seattle
 Law Department
 600 Fourth Avenue – 4th Floor
 Seattle, WA 98109-4645
 Attn: Helaine Honig

IF TO IRIS: IRIS Holdings, LLC
 1551 Eastlake Ave. East
 Seattle, WA 98102-3706
 Attn: Allan Golston

WITH A COPY TO: Preston Gates & Ellis LLP
 925 Fourth Avenue, Suite 2900
 Seattle, WA 98104-1158
 Attn: Christopher M. Carletti



or such other address as either party may from time to time specify in writing to the other.

(b) Memorandum of Agreement. Upon the request of one of the Parties, the Parties agree to execute and acknowledge an appropriate memorandum of this Agreement for public recordation purposes.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

(d) Merger of Prior Agreements. This Agreement and the exhibits hereto, constitutes the entire agreement between the Parties and supersede all prior agreements and understandings between the Parties relating to the subject matter hereof.

(e) Remedies and Enforcement. This Agreement is enforceable by specific performance, in addition to any other remedies available under the law. If either party hereto fails to perform any of its obligations under this Agreement or if a dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

(f) Time of the Essence. Time is of the essence of this Agreement.

(g) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(h) Counterparts and Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one agreement. This Agreement may be executed pursuant to original or facsimile copies of signatures, with the same effect as if the parties had signed the document pursuant to original signature.

(i) This Agreement is effective as of the date of mutual execution by the Parties.



IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the date provided for below.

The City of Seattle,

a Washington municipal corporation

By: _____

Its: _____

Date: _____

IRIS Holdings, LLC

a Washington limited liability company

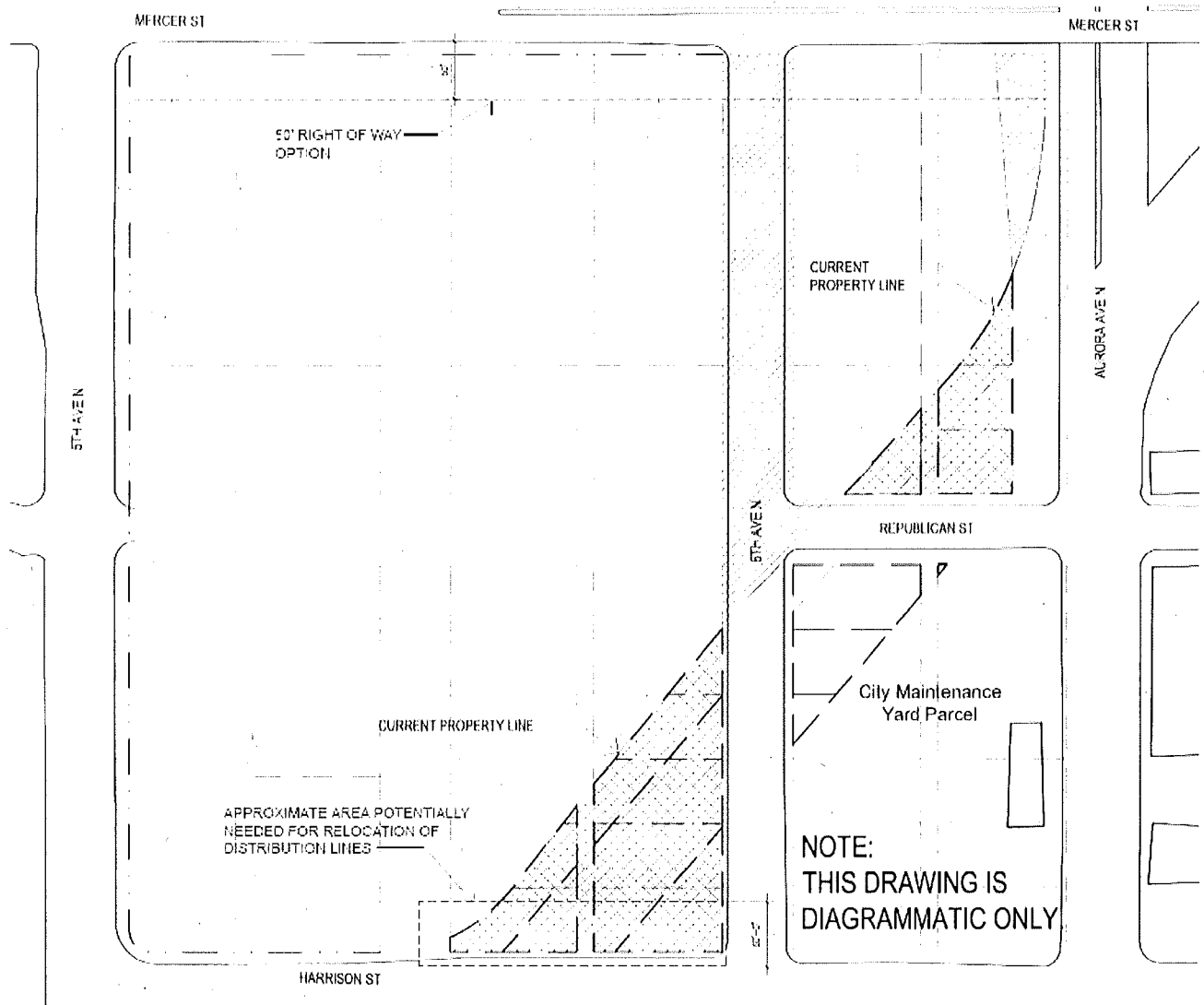
By: _____

Its: _____

Date: _____



EXHIBIT A



Diagonal stippling refers to the IRIS acreage that would be lost as a result of any taking.

Cross-hatched stippling refers to the acreage that may be gained through conveyance from the City of the Property Additions.





SCC-PNE – 7/6/05

RIGHTS-OF-WAY AGREEMENT: LOWERED AURORA AND PROJECTS AFFECTING LOT 2

Background

1. The Council Ordinance authorizing sale of Seattle Center's 5th Avenue Parking Lot (Lot 2) to IRIS (the Gates Foundation) requires that the Mayor submit to the City Council an "agreement acceptable to the City and to the Gates Foundation" addressing potential impacts and consequences of the City's possible acquisition of street rights of way for a Sixth Avenue extension through Lot 2". The Viaduct Project with a Lowered Aurora Segment occasions the need for this agreement. The Ordinance directs that the:
 - ☐ Mayor's proposal be transmitted to the City Council by May 31, 2005; and that,
 - ☐ The City Council act on the proposed agreement by August 30, 2005.
2. Representatives of the Law Department, SDOT, SCL and Seattle Center conducted negotiations to reach a mutually acceptable agreement. These discussions were based on the Lowered Aurora concept design that includes:
 - ☐ Reconnection of the east-west grid across a Lowered Aurora at Harrison St., Republican St (to 6th Avenue only), Mercer St., and Roy St.;
 - ☐ An "interchange" at Roy St. for north and south exiting from SR-99 both east and west;
 - ☐ A widened two-way Mercer Street at least to 5th Avenue;
 - ☐ Re-establishment of 6th Avenue as a two-way through neighborhood arterial from Mercer St. south through Lot 2 to connect further south at Harrison St.;
 - ☐ Vacation of Broad St. from 9th/Dexter Avenue to at least Harrison St.
4. Following completion of the proposed agreement and submittal of the ordinance to the City Council, the parties reconvened to review the most recent modifications to the Lowered Aurora concept to be studied in the Supplemental EIS. Changes from the earlier assumptions included:
 - ☐ Reconnection of Thomas Street across SR99;
 - ☐ Modifications to location of on-off ramps – spread out between Roy Street and Republican Street, rather than all at Roy;
 - ☐ Modification of location for exiting to Denny Way.

These changes result in significantly better functioning of the Lowered Aurora option and the adjacent City streets. They also anticipate additional encroachment into the easternmost segment of the Lot 2 property adjacent SR99.



Basic Concept of Proposed Agreement

- Impacts of Lowered Aurora on Lot 2: The City/WASHDOT will require part of Lot 2 property for Right-of-Way for:
 - ☐ Extension of 6th Avenue from Mercer St. to Harrison St.;
 - ☐ Extension of Republican St. across Aurora to 6th Avenue; and,
 - ☐ Reconfigured SR99 and its ramping system.
 - ☐ In order for Lowered Aurora to occur, Broad Street, which currently goes under SR99, will need to be vacated from Dexter to Harrison or Thomas St.
- Notice to IRIS: The City agrees to provide IRIS notice by September 30, 2010 if it intends to implement the Lowered Aurora option, vacate Broad St. extend 6th Avenue through Lot 2, and reconnect east:west streets. In turn, IRIS agrees it would not build permanent improvements before September 30, 2010 within IRIS-owned right-of-way required for the extension of 6th Avenue through Lot 2 and the connection of Republican to 6th Avenue.
- Mitigation Measures – Property Additions to Lot 2: The agreement also identifies two parcels of land adjacent to the Lot 2 site that would become available to the City if Broad Street were vacated and which could mitigate the impact of the Lowered Aurora option if these parcels were conveyed by the City to IRIS. These property additions to Lot 2 would have the effect of "squaring off" the blocks at Republican and Aurora and 6th and Harrison. (See illustrative map)
- Mitigation Measures – Character of 6th Avenue: The City also agrees to mitigate the impact of reconnecting Sixth Avenue through the Lot 2 site by establishing certain design characteristics for this stretch of Sixth Avenue, including that it be designed as a "pedestrian-friendly downtown street," with wide sidewalks, street trees and lighting, and that traffic on Sixth Avenue be calmed by a speed limit likely to be 30 MPH, by signalized intersections, and by pedestrian crosswalks.
- Mitigation Measures – Relocation of Utilities: Finally, the agreement addresses relocation of electrical utilities and provides that, if utility relocation to the 6th Avenue Right of Way is necessary solely due to the Lowered Aurora option, the City will cover such costs, unless IRIS wishes to pay for undergrounding that would not otherwise occur. (The City will pay for undergrounding of any utilities relocated onto the Lot 2 site from offsite as part of the Lowered Aurora option.)
- Subsequent Agreement: Once a decision to go forward with the Lowered Aurora project is made, a subsequent and final agreement between IRIS and the City will be prepared. The City and IRIS expect that the proposed initial agreement will facilitate a fair market exchange between the parties for the impacts of the Lowered Aurora option on the Lot 2 site. Any compensation provided to IRIS will be reduced by the fair market value of the property additions to be conveyed to IRIS. The actual impacts will be determined at a time in the future, based on the final design of the Lowered Aurora option, and the fair market value exchange will be quantified and agreed upon at that time.



Outline of Key Provisions of Proposed Agreement

1. IRIS agrees not to build any permanent facilities (with the exception of agreed utilities, if any) in the potential 6th Avenue ROW extension through Lot 2 before September 30, 2010 (or notice the Mayor has proposed vacating Broad St., whichever is earlier).
2. The City agrees the Mayor will propose to the City Council the vacation of Broad St. as the trigger for the Project Affecting Lot 2 no later than September 30, 2010.
3. The Mayor agrees
 - To have completed a follow-on agreement with IRIS for the conveyance of the IRIS-owned 6th Avenue ROW and the City-owned Property Additions to square off the blocks of the IRIS property not later than 90 days from proposing the Broad St. Vacation; and,
 - To proceed with the commitments in this Agreement on the character of a through 6th Avenue as part of the follow-on agreement; and,
 - IRIS agrees to continue deferral of construction in the 6th Avenue ROW extension through Lot 2 beyond September 30, 2010, provided these conditions are met.
4. The City's agreements with respect to squaring off the blocks and the character of a 6th Avenue extension are in perpetuity, should the City later undertake the "Project Affecting Lot 2"; IRIS's agreement to defer construction of permanent structures in the potential 6th Avenue ROW extension is limited and will terminate if the conditions of item 3 above don't occur.
5. If the City Council doesn't approve Broad St. vacation or any required actions to allow City conveyance of property to square-off the blocks for Lot 2, then the City won't proceed with ROW extensions through Lot 2 for 6th Avenue or Republican.
6. It now appears that if Lowered Aurora occurs, SCL's best option is to relocate both the existing overhead transmission line that crosses Lot 2 and the transmission line that runs from the Broad St. Substation to SLU and to the UW through the 6th Avenue ROW. The Agreement establishes principles about undergrounding these transmission lines and who pays, as follows:
 - (a) For electrical utilities already located on Lot 2, if the Project Affecting Lot 2 requires that the permanent relocation of these lines be on the 6th Avenue ROW, rather than the periphery of the IRIS campus, then the permanent relocation shall be at the discretion and cost of the City.
 - (b) If undergrounding of lines currently serving/traversing the Property that are relocated to 6th Avenue ROW is not required by the Project Affecting Lot 2, then the cost of undergrounding the permanent relocation of utilities in the 6th Avenue ROW shall be an IRIS expense.
 - (c) If any service to properties other than Lot 2 require traversing Lot 2 on the 6th Avenue ROW, as a result of the Project Affecting Lot 2, such added service shall be underground and the cost shall be borne by parties other than IRIS.

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Center	Shelly Yapp, 615-1729 Steve Pearce, SDOT, 684-8371 Helaine Honig, Law, 684-8222	Eve Sternberg, 386-1119

Legislation Title:

AN ORDINANCE relating to Seattle Center; authorizing the execution of an agreement between the City and IRIS Holdings, LLC ("IRIS") relating to the City's potential acquisition of certain rights-of-way through property located on Fifth Avenue North that IRIS has contracted to purchase from the City.

• **Summary of the Legislation:**

This legislation authorizes an agreement between the City of Seattle, and IRIS Holdings, LLC ("IRIS"), the sole member of which is the Bill & Melinda Gates Foundation, acknowledging that implementation of the Lowered Aurora option for the Alaskan Way Viaduct project will have a material impact on the Lot 2 Site (for which IRIS has signed a Purchase Agreement with the City) and establishing a framework for addressing and mitigating these impacts.

Under the terms of the agreement, the City agrees to provide notice to IRIS by September 30, 2010 if the City intends to implement the Lowered Aurora option, including the vacation of Broad Street, the extension of Sixth Avenue across the Lot 2 site, and the reconnection of east-west streets across Aurora. In turn, IRIS agrees to not construct permanent improvements before September 30, 2010 within IRIS-owned rights-of-way required for the extension of Sixth Avenue across the Lot 2 site and the reconnection of east-west streets across Aurora. The agreement also identifies two parcels of land adjacent to the Lot 2 site that would become available to the City if Broad Street were vacated and which could mitigate the impact of the Lowered Aurora option if these parcels were conveyed by the City to IRIS. Under the agreement, if the Council does not vacate Broad Street and take the necessary actions to enable conveyance of the two identified parcels to IRIS, the City agrees not to proceed with the street extensions through the Lot 2 property. IRIS intends to study the Lot 2 site, as it might be reconfigured should the Lowered Aurora option go forward, in the course of the environmental review they will do as part of their land use process for developing the property.

In the agreement, the City also agrees to mitigate the impact of reconnecting Sixth Avenue through the Lot 2 site by establishing certain design characteristics for this stretch of Sixth Avenue, including that it be designed as a "pedestrian-friendly downtown street," with wide sidewalks, street trees and lighting, and that traffic on Sixth Avenue be calmed by a speed limit likely to be 30 MPH, by signalized intersections, and by pedestrian crosswalks.



The agreement also addresses relocation of electrical utilities and provides that, if utility relocation on the 6th Avenue Right of Way is necessary solely due to the Lowered Aurora option, the City will cover such costs, unless IRIS wishes to pay for undergrounding that would not otherwise occur. (The City will pay for undergrounding of any utilities relocated onto the Lot 2 site from offsite as part of the Lowered Aurora option.)

The City and IRIS expect that this agreement will facilitate a fair market exchange between the parties for the impacts of the Lowered Aurora option on the Lot 2 site. Any compensation provided to IRIS will be reduced by the fair market value of the property additions to be conveyed to IRIS. The actual impacts will be determined at a time in the future, based on the final design of the Lowered Aurora option, and the fair market value exchange will be quantified and agreed upon at that time. It is the intent of the City to honor the goal of the Bill & Melinda Gates Foundation to be able to develop the campus for its headquarters to the same extent and with the same density as if the Lowered Aurora project had not occurred.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

On February 28, 2005, the City Council approved Ordinance 121742 authorizing the sale of Lot 2 to IRIS. During City Council review of this legislation, a section was added to the ordinance providing that:

“Prior to the end of the 90 day Due Diligence Period...the Mayor shall transmit to the City Council for its review and approval of an agreement acceptable to the Bill & Melinda Gates Foundation addressing potential impacts and consequences of the City’s possible acquisition of street rights of way through Lot 2.”

The attached legislation authorizes the agreement cited above.

- *Please check one of the following:*

X **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

This legislation establishes a framework for addressing the impacts of the implementation of the Lowered Aurora option on the Lot 2 property purchased by IRIS on behalf of the Bill & Melinda Gates Foundation. The actual impacts and fair market value exchange will be determined at a later date, if, in fact, the Lowered Aurora option is implemented.





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

May 31, 2005

Honorable Jan Drago
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Drago:

I am pleased to transmit the attached proposed Council Bill authorizing an agreement between the City of Seattle, and IRIS Holdings, LLC ("IRIS"), the sole member of which is the Bill & Melinda Gates Foundation. The agreement acknowledges that implementation of the Lowered Aurora option for the Alaskan Way Viaduct project would have a material impact on the Lot 2 Site, and establishes a framework for addressing and mitigating these impacts. The actual fair market value exchange will be determined at a later date if the Lowered Aurora option is implemented.

On February 28, 2005, the City Council approved Ordinance 121742 authorizing the sale of Lot 2 to IRIS. Ordinance 121742 included a clause stating that prior to the end of the 90 day Due Diligence Period for the sale of Lot 2, the Mayor would transmit to the City Council for its review and approval, an agreement acceptable to the Bill & Melinda Gates Foundation that addresses potential impacts and consequences of the City's possible acquisition of street rights-of-way through Lot 2. Under the terms of the agreement authorized by this Bill, the City agrees to provide notice to IRIS by September 30, 2010 if it intends to implement the Lowered Aurora option, including the vacation of Broad Street, the extension of Sixth Avenue across the Lot 2 site, and the reconnection of east-west streets across Aurora. In turn, IRIS agrees it will not construct permanent improvements before September 30, 2010 within IRIS-owned rights-of-way required for the extension of Sixth Avenue across the Lot 2 site and the reconnection of east-west streets across Aurora. The proposed agreement also identifies two parcels of land adjacent to the Lot 2 site that would become available to the City if Broad Street were vacated, which could mitigate the impact of the Lowered Aurora option if both parcels were conveyed by the City to IRIS.

The attached agreement has been negotiated in good faith with the Bill & Melinda Gates Foundation. It provides a framework for determining, at some future date, the impact on the Lot 2 site if the Lowered Aurora option is implemented. Should you have questions, please contact Shelly Yapp at 615-1729.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Greg Nickels', written over a large, faint, stylized 'S' shape.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E-mail: mayors.office@seattle.gov

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

ORDINANCE _____

AN ORDINANCE relating to Seattle Center; authorizing the execution of an agreement between the City and IRIS Holdings, LLC ("IRIS") relating to the City's potential acquisition of certain rights-of-way through property located on Fifth Avenue North that IRIS has contracted to purchase from the City.

WHEREAS, pursuant to Ordinance 121742, the City and IRIS, a wholly-owned subsidiary of the Bill & Melinda Gates Foundation, executed a Purchase Agreement pursuant to which IRIS will purchase certain City property located on Fifth Avenue North, and commonly known as Seattle Center Parking Lot 2, for construction of the world headquarters campus of the Bill & Melinda Gates Foundation; and

WHEREAS, on January 10, 2005, just prior to submittal of the Purchase Agreement to the City Council for review and approval, the City Council adopted Resolution 30726 recommending as a preferred alternative for future construction of the northern terminus of the Alaska Way Viaduct and Seawall Project, the so-called Lowered Aurora option; and

WHEREAS, implementation of the Lowered Aurora option will have a material impact on the Lot 2 site, potentially substantially altering the plans of IRIS and the Bill & Melinda Gates Foundation; and

WHEREAS, in recognition of the potential impacts from the Lowered Aurora option, the City Council amended Ordinance 121742 authorizing the sale of Lot 2 to IRIS to provide that the Purchase Agreement shall terminate unless a Council-approved agreement acceptable to the Bill & Melinda Gates Foundation addressing such impacts is executed before the expiration of the Due Diligence Period, as extended, provided for in the Purchase Agreement; and

WHEREAS, the parties have concluded their negotiations; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director ("Director") and recommended by the Mayor, the Seattle Center Director or her or his designee is hereby authorized to execute and deliver, for and on behalf of The City of Seattle, an agreement substantially in the form of the agreement attached hereto and identified as "RIGHTS-OF-WAY AGREEMENT: LOWERED AURORA AND PROJECTS AFFECTING LOT 2" (Attachment 1).



Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of ____, 2005, and signed by me in open session in authentication of its passage this ____ day of ____, 2005.

President ____ of the City Council

Approved by me this ____ day of ____, 20__.

Gregory J. Nickels, Mayor

Filed by me this ____ day of ____, 20__.

City Clerk

(Seal)

Attachment 1 -- RIGHTS-OF-WAY AGREEMENT: LOWERED AURORA AND PROJECTS AFFECTING LOT 2

Exhibit A to Attachment 1 – Diagram of Property Additions



Attachment 1

RIGHTS-OF-WAY AGREEMENT: LOWERED AURORA AND PROJECTS AFFECTING LOT 2

RECITALS

WHEREAS, the Bill & Melinda Gates Foundation conducted a region-wide search for a site with sufficient acreage to enable it to construct over time a multi-structure campus sufficient to accommodate a headquarters facility for many decades to come; and

WHEREAS, the Bill & Melinda Gates Foundation evaluated numerous sites within the City of Seattle (the "City"), including the Seattle Center 5th Avenue Parking Lot ("Lot 2") and several multi-block sites in nearby proximity to the Lot 2 site; and

WHEREAS, the Bill & Melinda Gates Foundation has told the City that it responded to the City's proposal of making the Lot 2 site available for purchase and that it selected the Lot 2 site for location of its world headquarters because, among other reasons, the Lot 2 site was the only available site with sufficient contiguous acreage not currently transected by public streets; and

WHEREAS, during negotiation of the Purchase Agreement for acquisition of Lot 2 by IRIS Holdings, LLC ("IRIS"), a wholly-owned entity of the Bill & Melinda Gates Foundation, Seattle Center representatives presented the Mayor's announced preferred proposal for substantial transportation improvements in the vicinity of the site. The Mayor's proposal involved the lowering of Aurora Avenue, including widening of the right-of-way for ramps, the extension of Sixth Avenue between Mercer and Harrison Streets, and the reconnection of east-west streets across Aurora, including Republican Street from Dexter Avenue to the extended Sixth Avenue ("Lot 2 Street Extensions). The Mayor's proposal also required vacation of Broad Street between Ninth Avenue and Harrison or Thomas Street ("Broad Street Vacation"); and,

WHEREAS, on January 10, 2005, just prior to submittal of the proposed Purchase Agreement to the City Council for review and approval, the City Council adopted Resolution 30726 agreeing with the Mayor's recommended preferred alternative for the Alaska Way Viaduct and Seawall Project, a feature of which is the so-called Lowered Aurora option that contemplates the Lot 2 Street Extensions and the Broad Street Vacation (collectively, the "Project Affecting Lot 2"). The issue also was raised during City Council consideration of the Lot 2 Purchase Agreement; and

WHEREAS, in order to address the Project Affecting Lot 2 as an item during due diligence following execution of the Purchase Agreement, Ordinance 121742 authorizing the sale of Lot 2 to IRIS was amended to provide that "(p)rior to the end of the 90 day Due Diligence Period provided for in Section 4 of the Purchase Agreement, the Mayor shall transmit legislation to the City Council for its review and approval of an



agreement acceptable to the City and to the Bill & Melinda Gates Foundation addressing potential impacts and consequences of the City's possible acquisition of street rights of way for a Sixth Avenue extension through Lot 2 [the "Project Affecting Lot 2"]. As provided in Section 5 of the Purchase Agreement, the Purchase Agreement shall terminate unless a Council-approved agreement acceptable to the Bill & Melinda Gates Foundation is executed before the expiration of the Due Diligence Period, as extended. Notwithstanding the preceding, IRIS may at any time during the Due Diligence Period approve or waive all Diligence Period Conditions and proceed to close"; and

WHEREAS, since enactment of Ordinance 121742, IRIS and the Bill & Melinda Gates Foundation have continued their evaluation of the prospects for the Project Affecting Lot 2 as proposed and the potential impacts such extensions and vacations may have for utilization of the Lot 2 site for the headquarters of the Bill & Melinda Gates Foundation; and

WHEREAS, while it remains uncertain whether the measures included in the Project Affecting Lot 2 would be undertaken by the City, or if they were, when that might occur, the City is willing to establish a date certain by which the City will notify IRIS and the Bill & Melinda Gates Foundation of its intent to initiate further actions to implement the Project Affecting Lot 2 and IRIS is willing to defer construction in the potential rights-of-way required for the Lot 2 Street Extensions and undertake other actions in consideration for the City's commitments provided for in this agreement (the "Agreement"); and,

WHEREAS, if the City proceeds to extend/vacate the streets as proposed, such extensions/vacations will have a material impact on the Lot 2 site, potentially substantially altering the plans of IRIS and the Bill & Melinda Gates Foundation. Although the extent of that impact is not determinable at this time, such potential damage would be fully compensated and mitigated as provided herein by the City at such time as it acquires rights-of-way for the Lot 2 Street Extensions and undertakes the Broad Street Vacation; and

WHEREAS, a portion of the Lot 2 site is encumbered until September 30, 2010 by the lease to the Basketball Club of Seattle for the Sonics and Storm Practice Facility ("Practice Facility") and by an easement for access to the Practice Facility; and

WHEREAS, certain measures may enable the Bill & Melinda Gates Foundation to make effective use of the Lot 2 site for its headquarters notwithstanding the impacts of the Project Affecting Lot 2; and

WHEREAS, the City and IRIS are entering this Agreement with a goal that IRIS be able to develop its campus for the headquarters of the Bill & Melinda Gates Foundation to the same extent and with the same density as if the Project Affecting Lot 2 had not occurred.



NOW, THEREFORE, as provided under Section 4 of Ordinance 121742 authorizing the sale of Lot 2 to IRIS, the City and IRIS (the "Parties") hereby agree as follows:

Section 1. Approval/Waiver of Due Diligence Conditions. IRIS hereby approves or waives all of the due diligence conditions under Section 5 of the Purchase Agreement precedent to its obligation to purchase the Lot 2 site (the "Property").

Section 2. Lot 2 Street Extensions and Broad Street Vacation – Project Affecting Lot 2. IRIS hereby agrees to include, and evaluate, in the environmental review documents for development of the campus on the Property, a development option based upon a reconfigured campus site that allows for the Lot 2 Street Extensions and the Broad Street Vacation. This development option incorporating the Project Affecting Lot 2 shall include the Property Additions that the City would propose to be provided in whole or partial exchange for the Lot 2 Street Extensions, as described in Section 4 below, and shall be based upon the design characteristics of Sixth Avenue, as described in Section 5 below.

Section 3. Limit on Construction within the Rights-of-Way Required for the Lot 2 Street Extensions. IRIS hereby agrees to defer construction of permanent improvements, which improvements do not include the relocation of utilities as the Parties may agree, within the IRIS-owned rights-of-way required for the Lot 2 Street Extensions until the earlier of the following dates (the "Deferral Termination Date"):

- (a) Notice to IRIS by the City that the City is no longer contemplating the Project Affecting Lot 2; or,
- (b) September 30, 2010.

If the City provides notice to IRIS and the Bill & Melinda Gates Foundation prior to September 30, 2010 that the Mayor will recommend the approval of the Broad Street Vacation to the City Council in order to implement the Project Affecting Lot 2, the Parties agree to enter into good faith negotiation of an agreement to convey the IRIS-owned rights-of-way required to implement the Project Affecting Lot 2 and to proceed with commitments under Section 4 below. The giving of such notice by the City, if applicable, shall extend the Deferral Termination Date to the later of September 30, 2010 or 90 days from the date of such notice, or such later date as may be agreed in writing by the Parties. Upon the Deferral Termination Date (as may be extended), IRIS's agreement to defer construction as set forth in this section shall automatically terminate.

The City acknowledges that, during the time period limiting construction within the Rights-of-Way required for the Lot 2 Street Extensions or as a result of lease and access encumbrances on some of the Property required for Lot 2 Street Extensions, IRIS may identify one or more development options contemplating construction of permanent improvements within such rights-of-way as an alternative under the environmental review documents for development of the Property and seek and obtain



permits for such future development options. The City shall not withhold or delay the processing of permit application(s) for such development options.

Section 4. Property Additions. The Parties concur that it is possible that the impact of the Project Affecting Lot 2 could be mitigated in whole or in part by conveyance to IRIS of two parcels of land adjacent to the Property that would become available to the City, as part of the proposed vacation and elimination of Broad Street between Aurora Avenue and Harrison Street, in the event the City proceeds with the contemplated Project Affecting Lot 2. These parcels are identified diagrammatically on Exhibit A (the "Property Additions").

- (a) The Parties agree that, in the event the City notifies IRIS and the Bill & Melinda Gates Foundation as provided for in Section 3 above, or otherwise determines to proceed with the contemplated Project Affecting Lot 2, the Director of the Seattle Department of Transportation (or that person's functional successor) shall, upon such notice, promptly prepare, and the Mayor shall recommend to the City Council, legislation authorizing the Broad Street Vacation and conveyance of the Property Additions to IRIS in whole or partial exchange for the IRIS property proposed to be acquired by the City.
- (b) Consideration to be paid to IRIS for the taking or dedication, including compensation for the value of the land acquired as well as other damages IRIS may experience as a result of the impact of the takings on facilities it may have constructed on the Property and its ability to achieve its fundamental objective in acquiring the Property, shall be reduced by the fair market value of the Property Additions conveyed.
- (c) In the event that the City Council does not approve vacation of Broad Street adjacent to the Property or take any other discretionary actions necessary to allow for conveyance to IRIS of the Property Additions in whole or partial exchange for the IRIS property proposed to be acquired by the City, as contemplated herein, the City agrees not to proceed with the Lot 2 Street Extensions through the Property.

Section 5. Sixth Avenue Design Characteristics. If the Project Affecting Lot 2 goes forward, with the result that the City reacquires the Lot 2 Street Extensions, the City agrees to mitigate, in consultation with IRIS, and at the City's expense (without offset against proceeds due IRIS for any taking), the impacts of the Project Affecting Lot 2 in part by designing Sixth Avenue through the Property (between Mercer and Harrison Streets) to have the following characteristics:

- (a) Sixth Avenue will be a "neighborhood" arterial street providing one of a number of options for traffic traveling to or through the area. Sixth Avenue will become part of an enhanced street grid that will serve to spread traffic out rather than concentrating all traffic in one particular corridor.



- (b) The design of Sixth Avenue will also reflect the City's land use planning goals and objectives to transform South Lake Union and Uptown urban centers into denser, pedestrian-friendly neighborhoods, well served by transit. Traffic speed on Sixth Avenue would be calmed by a speed limit likely to be 30 MPH (similar to other streets in the neighborhood); by signalized intersections and pedestrian crosswalks on each block through the area.
- (c) The design of Sixth Avenue will also allow for accommodation of a pedestrian skybridge over Sixth Avenue, at IRIS expense, to connect parcels of the Property that would be bisected by the proposed Sixth Avenue extension.
- (d) The Sixth Avenue right-of-way from Mercer Street to Harrison Street will be a maximum of 80' in width, with the center line of the street located at the center line of vacated Sixth Avenue; this is a transitional width between the somewhat narrower right of way on Sixth Avenue north of Mercer Street and the somewhat wider right of way on Sixth Avenue south of Harrison Street.
- (e) A maximum of four through travel lanes total (two northbound and two southbound) will be provided on Sixth Avenue between Mercer Street and Harrison Street. Left turn pockets may be included at intersections.
- (f) At the time of construction of Sixth Avenue, signalized intersections will be provided at Sixth Avenue and Mercer Street, Sixth Avenue and Republican Street, and Sixth Avenue and Harrison Street.
- (g) Sixth Avenue will be designed as a pedestrian-friendly "downtown" street. Wide sidewalks (10' minimum) will be provided on both sides of the street, with street trees and lighting. At the time of construction of Sixth Avenue, signalized crosswalks will be provided, at minimum, on the south side of the Sixth Avenue and Mercer Street intersection, on both north and south sides of the Sixth Avenue and Republican Street intersection, and the north and south sides of the Sixth Avenue and Harrison Street intersection.
- (h) As the principal property owner adjacent to proposed Sixth Avenue extension, IRIS and the Bill & Melinda Gates Foundation will be fully consulted on the actual street design and will have the opportunity to fund additional amenities beyond those identified above (such as a pedestrian skybridge) that enhance the neighborhood character of Sixth Avenue and circulation and access to and among the parcels of the Property as may be altered as a result of this Agreement.



Section 6. Relocation of Electrical Utilities. It is IRIS's desire in the development of the Property to relocate electrical utilities currently serving or traversing the Property, on a permanent basis, to the perimeter of the Property, either above or underground, at IRIS's expense. IRIS recognizes that electrical utilities presently serving or traversing the Property have a right of easement for continued service.

- (a) In the event that permanent relocation of some or all electrical utilities currently traversing or presently serving the Property are required by the City, solely in order to implement the Project Affecting Lot 2, to be located in the Sixth Avenue Right of Way, the expense of relocating such affected lines shall be at the cost and discretion of the City; provided, that, IRIS may elect to have the City locate underground any electrical utilities that would not otherwise be located underground and pay the additional incremental cost of doing so.
- (b) In the event that the Project Affecting Lot 2 includes a proposal to relocate electrical utilities not currently traversing or presently serving the Property in the Sixth Avenue Right of Way, and the City proceeds with the Lot 2 Street Extensions, the City agrees that such electrical utilities shall be located underground, that such utilities shall not be relocated at IRIS's expense, and that such utilities shall only be relocated in the Sixth Avenue Right of Way if there is sufficient space to include both the electrical utilities currently traversing or presently serving the Property and the electrical utilities not currently traversing or presently serving the Property.
- (c) The Parties acknowledge that if certain electrical utility transmission and distribution lines currently traversing the Property and/or currently located in Broad Street are relocated under the Property and the Property Additions as a consequence of the Project Affecting Lot 2 and the Broad Street Vacation, the City will require up to a 60-foot wide easement along Harrison Street within the approximate area of the Property and the Property Additions diagrammatically shown on Exhibit A to accommodate the underground installation and that for the duration of such easement, IRIS' improvements on the easement area will be limited to landscaping and minor hardscape installation.

Section 7. Good Faith Intent of the Parties. This Agreement is being entered into between the City and IRIS based on information known as of the execution date as a result of initial conceptual design of the Lowered Aurora Project (Exhibit B) and the Project Affecting Lot 2. Should the Project Affecting Lot 2 proceed as represented herein, the Parties expect that this Agreement will facilitate a fair value exchange between the Parties for impacts of the Project Affecting Lot 2 on the IRIS-owned Property that will serve as the headquarters for the Bill & Melinda Gates Foundation. The Parties acknowledge, however, that should the Project Affecting Lot 2 proceed, the actual impacts will be determined based upon the final project design, and the fair value exchange will be quantified and agreed upon at that time. It is the intent of the City to



honor the goal of the Bill & Melinda Gates Foundation to be able to develop the campus for its headquarters to the same extent and with the same density as if the Project Affecting Lot 2 had not occurred.

Section 8. Representations and Warranties.

(a) The City. The City hereby represents and warrants that it has full and complete power and authority to enter into this Agreement and to perform its obligations hereunder, including full and complete power and authority to enter into and to perform its obligations under the agreements contemplated by this Agreement, subject to the terms and conditions of this Agreement, and has obtained an opinion from the City's law department to such effect.

(b) IRIS. IRIS hereby represents and warrants that it has full and complete power and authority to enter into this Agreement and to perform its obligations hereunder, including full and complete power and authority to enter into and to perform its obligations under the agreements contemplated by this Agreement, subject to the terms and conditions of this Agreement.

Section 9. Miscellaneous.

(a) Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service, with receipt acknowledgment requested, (iii) upon receipt if transmitted by facsimile telecopy, with a copy sent on the same day by one of the other permitted methods of delivery, or (iii) upon receipt or refused delivery deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

IF TO CITY: The City of Seattle
Law Department
600 Fourth Avenue – 4th Floor
Seattle, WA 98109-4645
Attn: Helaine Honig

IF TO IRIS: IRIS Holdings, LLC
1551 Eastlake Ave. East
Seattle, WA 98102-3706
Attn: Allan Golston

WITH A COPY TO: Preston Gates & Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Attn: Christopher M. Carletti



or such other address as either party may from time to time specify in writing to the other.

(b) Memorandum of Agreement. Upon the request of one of the Parties, the Parties agree to execute and acknowledge an appropriate memorandum of this Agreement for public recordation purposes.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

(d) Merger of Prior Agreements. This Agreement and the exhibits hereto, constitutes the entire agreement between the Parties and supersede all prior agreements and understandings between the Parties relating to the subject matter hereof.

(e) Remedies and Enforcement. This Agreement is enforceable by specific performance, in addition to any other remedies available under the law. If either party hereto fails to perform any of its obligations under this Agreement or if a dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

(f) Time of the Essence. Time is of the essence of this Agreement.

(g) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(h) Counterparts and Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one agreement. This Agreement may be executed pursuant to original or facsimile copies of signatures, with the same effect as if the parties had signed the document pursuant to original signature.

(i) This Agreement is effective as of the date of mutual execution by the Parties.



IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the date provided for below.

The City of Seattle,

a Washington municipal corporation

By: _____

Its: _____

Date: _____

IRIS Holdings, LLC

a Washington limited liability company

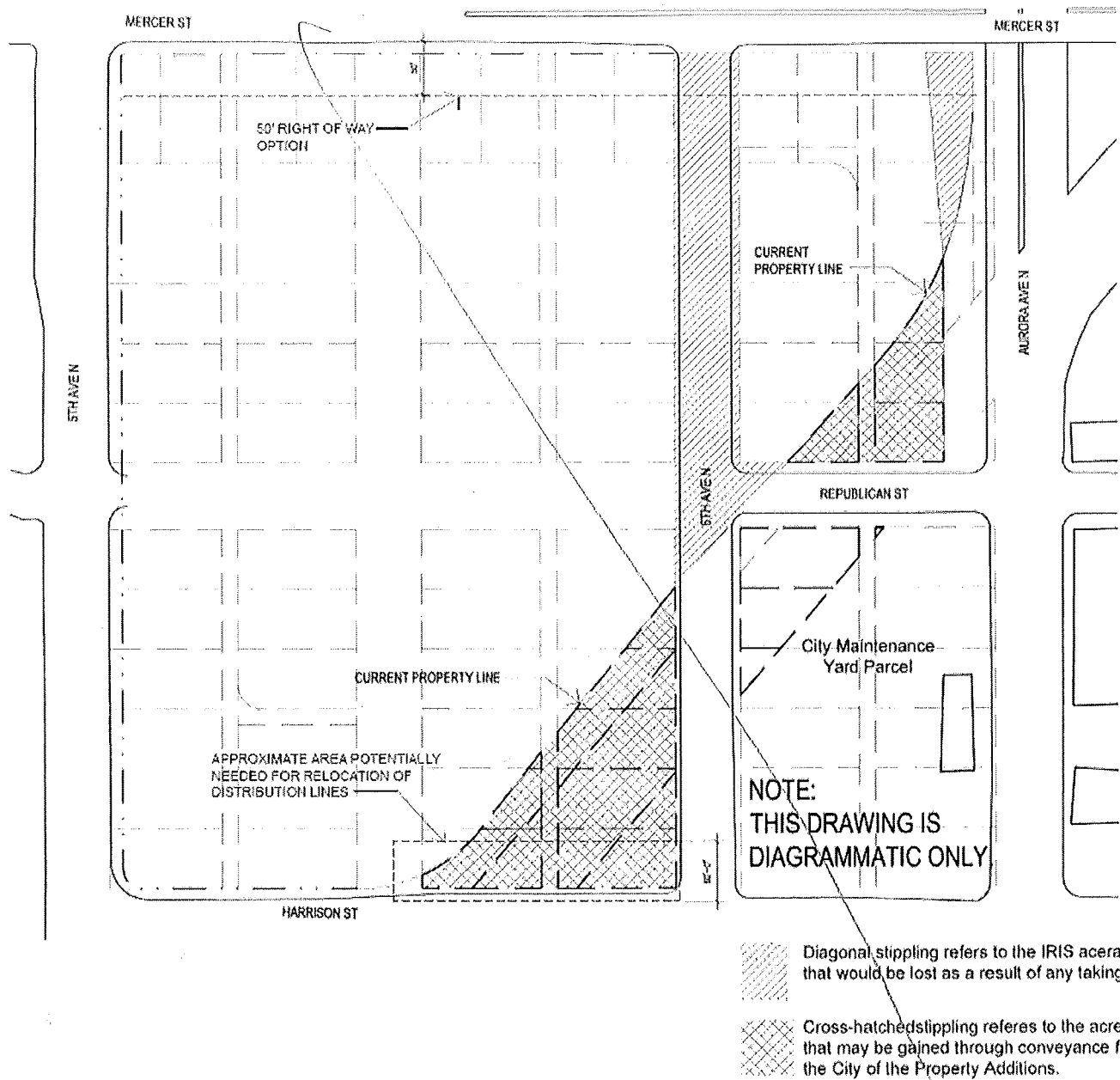
By: _____

Its: _____

Date: _____



EXHIBIT A



STATE OF WASHINGTON – KING COUNTY

--SS.

189227
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

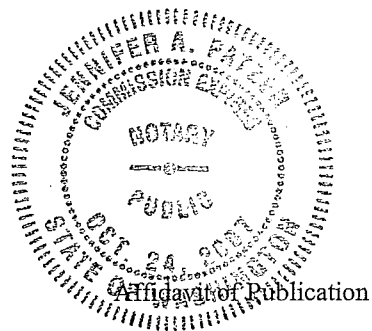
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121878-121890

was published on

08/19/05

The amount of the fee charged for the foregoing publication is the sum of \$ 178.88, which amount has been paid in full.



[Signature]

Subscribed and sworn to before me on

08/19/05

[Signature]

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on August 8, 2005, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 121890

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 121889

AN ORDINANCE relating to the construction of new fire facilities; amending the 2005 Adopted Budget, including the 2005-2010 Capital Improvement Program (CIP); amending a CIP project; making appropriations to the Fleets and Facilities Department, from the Cumulative Reserve Subfund and the 2003 Fire Facilities Fund to pay for the construction of a new Fire Station 10; all by a three-fourths vote of the City Council.

ORDINANCE NO. 121888

AN ORDINANCE conditionally authorizing the Mayor to sign and/or execute individual collective bargaining agreements by and between the City of Seattle and the individual Unions which are part of the Coalition of City Unions to be effective through December 31, 2007; and providing payment therefor.

ORDINANCE NO. 121887

AN ORDINANCE relating to compensation for certain City officers and employees not covered by collective bargaining agreements and providing salary increases effective December 29, 2004; December 28, 2005; and December 27, 2006; and providing payment therefor.

ORDINANCE NO. 121886

AN ORDINANCE relating to City employment, to be known as the 2005 Pay Zone Ordinance, which adjusts the pay zone structures for the City's discretionary pay programs for the year 2005; provides for the Personnel Director to maintain consistency in pay administration for the Information Technology Professional program and sets the maximum of the pay zone as the limit for base pay setting in the Executive, Manager and Strategic Advisor Programs.

ORDINANCE NO. 121885

AN ORDINANCE superseding Ordinance 121692 to authorize the Personnel Director to provide a wage supplement and health care benefits for employees who are mobilized by the United States Armed Forces for active military service.

ORDINANCE NO. 121883

AN ORDINANCE amending the 2005 Adopted Budget, including the 2005-2010 Capital Improvement Program (CIP); changing appropriations to various departments and from various funds in the Budget; making cash transfers between various City funds and subfunds; removing a 2005 budget proviso; amending the CIP for Seattle Public Utilities; and creating positions, of which one is exempt; all by a three-fourths vote of the City Council.

ORDINANCE NO. 121882

AN ORDINANCE amending the 2005 Adopted Budget, including the 2005-2010 Capital Improvement Program (CIP); amending and creating new CIP projects; making appropriations to various departments, from the Cumulative Reserve Subfund and Transportation Operating Fund; all by a three-fourths vote of the City Council.

ORDINANCE NO. 121881

AN ORDINANCE authorizing, in 2005, acceptance of funding from non-City sources; authorizing the Department of Executive Administration, the Department of Parks and Recreation, the Office of Policy and Management, the Seattle Fire Department, the Seattle Municipal Court, and the Seattle Police Department to accept specified grants and private funding.

ORDINANCE NO. 121880

AN ORDINANCE relating to assistance for the homeless, authorizing an agreement with the United States Department of Housing and Urban Development for additional funds available under the Stuart B. McKinney Homeless Assistance Act.

ORDINANCE NO. 121878

AN ORDINANCE relating to the City's Consolidated Plan for Housing and Community Development for 2005-2008; authorizing acceptance of grant funds from the United States Department of Housing and Urban Development for programs included in the City's Consolidated Plan for Housing and Community Development; decreasing appropriations in the 2005 Budget for activities under the Emergency Shelter Grant Program, HOME Program, Community Development Block Grant Program, and Housing Opportunities for Persons With AIDS program; amending City's Consolidated Plan to amend the 2005 Table of Proposed Projects component and the Housing Policies appendix, and revising Appendix P to such Plan to include a new Neighborhood Revitalization Strategy for Southeast Seattle and to delete such strategies for four other neighborhoods; authorizing the submission of revised Appendix P to the United States Department of Housing and Urban Development; authorizing other conforming amendments to the Consolidated Plan; allocating unused funds from prior years; and ratifying and confirming prior acts.

ORDINANCE NO. 121879

AN ORDINANCE relating to Seattle Center; authorizing the execution of an agreement between the City and IRIS Holdings, LLC ("IRIS") relating to the City's potential acquisition of certain rights-of-way through property located on Fifth Avenue North that IRIS has contracted to purchase from the City.

Publication ordered by JUDITH PIPPIN, City Clerk

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